

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

-v-

Case Number:15-20550

NGK Insulators, Ltd.

Defendant.

\_\_\_\_\_ /

GUILTY PLEA AND SENTENCING  
BEFORE THE HONORABLE GEORGE C. STEEH  
UNITED STATES DISTRICT JUDGE  
236 U. S. Courthouse & Federal Building  
231 West Lafayette Boulevard West  
Detroit, Michigan 48226  
MONDAY, NOVEMBER 16<sup>TH</sup>, 2015

APPEARANCES:

For the Plaintiff:

KENNETH W.GAUL, Assistant United  
States Attorney

MICHAEL H. PINE, Assistant United  
States Attorney

U.S. DEPARTMENT OF JUSTICE  
ANTITRUST DIVISION

For the Defendant:

MICHAEL KENDALL, ESQ.  
McDermott Will & Emory

ROBERT B. BELL, ESQ.  
Hughes Hubbards

APPEARANCES (CONTINUING):

JENNIFER B. PATTERSON, ESQ.  
Kaye Scholar

GREGORY J. WALLACE, ESQ.  
Kaye Scholar

JAMES THOMAS, ESQ.  
Local Counsel

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1 Detroit, Michigan

2 Monday, November 16<sup>th</sup>, 2015

3 (At or about 2:15 p.m.)

4 -- -- --

5 THE CLERK: Case number 15-20550, United States of  
6 America versus NGK Insulators, Limited.

7 THE COURT: Good afternoon.

8 MR. GAUL: Good afternoon, your Honor.

9 Kenneth Gaul, for the United States, and with me  
10 today is my colleague, Michael Pine, whom I don't believe  
11 has had the honor of meeting you yet.

12 MR. PINE: Good afternoon, your Honor.

13 THE COURT: And, Mr. Thomas?

14 MR. THOMAS: Well, your Honor, I'm accompanied by  
15 several lawyers who are going to speak today.

16 THE COURT: Oh, I see.

17 MR. THOMAS: I have the privilege of being local  
18 counsel, and I'm probably going to sit down.

19 MR. KENDALL: Good afternoon, your Honor.

20 My name is Mike Kendall. I'm with the firm of  
21 McDermott Will and Emery.

22 Also here for NGK is Robert Bell, Jennifer  
23 Patterson, and Greg WALLACE.

24 THE COURT: Okay. Welcome. This is a rare occasion  
25 I won't be hearing from Mr. Thomas.

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1 All right. If you'd like to take the podium along  
2 with your corporate representative.

3 I see -- do we have the assistance of an  
4 interpreter today as well?

5 MS. SOMERS: Yes.

6 THE COURT: All right, although I understand  
7 you're just functioning in a backup capacity today; is that  
8 right?

9 THE INTERPRETER: I would like to answer as much  
10 as I can in English. However, to make sure that I  
11 understand correctly I also would like to my interpreter  
12 from time to time.

13 THE COURT: All right.

14 Ma'am, could you state your name for us?

15 MS. SOMERS: My name is Ayumi Somers.

16 THE COURT: And I'm going to have you take an  
17 oath. If you would raise your right hand, please?

18 THE CLERK: Do you solemnly or affirm that you  
19 will justly, truly, fairly and impartially act as an  
20 interpreter in the case now before the Court so help you  
21 God?

22 MS. SOMERS: Yes, I do.

23 THE COURT: All right. Well, the Court has been  
24 presented today with a number of documents.

25 Mr. Kendall, are you going to be doing the

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1 lead --

2 MR. KENDALL: Mr. Bell and I will be doing it,  
3 yes, your Honor.

4 THE COURT: Okay. So, I gather from these  
5 documents that the corporate defendant wishes to plead  
6 guilty to the charges in Counts One and Two of the  
7 Information; is that right?

8 MR. KENDALL: Yes.

9 THE COURT: Okay. And would you like to, again,  
10 introduce your corporate representative?

11 MR. KENDALL: Yes. This is Mr. Saji. He is  
12 presently the company's chief compliance officer. He is  
13 also -- was the head of the law department who oversaw the  
14 internal investigation and cooperation with the United  
15 States Government on this matter.

16 THE COURT: I see. Okay. Thank you.

17 Mr. Saji, we're going to have you sworn also. If  
18 you would raise your right hand?

19 THE CLERK: Do you solemnly swear the testimony  
20 you're about to give to the Court in the matter herein  
21 pending is the truth, the whole truth, and nothing but the  
22 truth so help you God?

23 MR. SAJI: Yes, I do.

24 THE COURT: All right. Could you state your name  
25 for us?

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1 MR. SAJI: My name is Nobumitsu Saji.

2 THE COURT: Mr. Saji, you hold the corporate  
3 capacity with the defendant in this case as described by  
4 Mr. Kendall?

5 MR. SAJI: Yes, your Honor.

6 THE COURT: And you have been given authority to  
7 enter a plea in this case by the Board of Directors of the  
8 defendant?

9 MR. SAJI: Yes.

10 THE COURT: All right. Can you tell me how old you  
11 are, sir?

12 MR. SAJI: Fifty-seven years old now.

13 THE COURT: Okay. And you have some facility to  
14 read and write the English language?

15 MR. SAJI: Yes, I do.

16 THE COURT: And, obviously, to speak it as well.

17 MR. SAJI: Yes.

18 THE COURT: You -- again, if you don't understand  
19 something being said during this time here you'll have us  
20 repeat and we'll do the same with you; all right?

21 MR. SAJI: Yes, your Honor.

22 THE COURT: Okay. The Court didn't enumerate all  
23 of the documents that are placed before it, but will be  
24 addressing them in turn.

25 Among those documents is a document called a

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1 Waiver of Indictment. Do you recall reading that item, sir?

2 MR. SAJI: Yes, your Honor.

3 THE COURT: Do you understand that you have an  
4 absolute right to enter a not guilty plea in this case. And  
5 in the event you were to do so, the case would not proceed  
6 further unless and until a grand jury had the opportunity  
7 to consider the case for indictment; do you understand  
8 that?

9 MR. SAJI: Yes, your Honor.

10 THE COURT: Okay. You understand from your  
11 discussions with counsel how a grand jury and the United  
12 States operates?

13 MR. SAJI: Yes.

14 THE COURT: And so you understand that if the  
15 matter were presented to the grand jury and the grand jury  
16 determined not to charge the defendant with a violation the  
17 case would end at that point?

18 MR. SAJI: Yes.

19 THE COURT: You have decided, however, apparently  
20 to waive your right, that is, not your right, but your  
21 company's right to an indictment in this case; is that  
22 right?

23 MR. SAJI: Yes, your Honor.

24 THE COURT: And that decision is made I expect  
25 based upon the same promises that are made to you in this

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1 Rule 11 Plea Agreement that's been presented to the Court;  
2 is that also correct?

3 MR. SAJI: Yes.

4 THE COURT: Do you understand that the corporation  
5 in this case has been charged with two violations,  
6 conspiracy to restrain trade and destruction of documents  
7 with the intent to obstruct an ongoing investigation; do  
8 you understand that?

9 MR. SAJI: Yes, your Honor.

10 THE COURT: And you understand in relation to the  
11 charge of conspiracy to restrain trade that the maximum  
12 sentence for that violation is the greatest amount among  
13 three potential sums in this case. First, a hundred million  
14 dollars. Second, twice the pecuniary gain that the  
15 conspirators realized from the crime. And thirdly, twice  
16 the pecuniary loss caused to the victims of the crime by  
17 the conspirators. Do you understand that the greatest among  
18 those three figures would be the maximum sentence that the  
19 Court could impose for the violation?

20 MR. SAJI: Yes, your Honor.

21 THE COURT: And do you understand that the charges  
22 in Count Two of obstruction of justice carry a maximum fine  
23 of five hundred thousand dollars as well; do you understand  
24 that?

25 MR. SAJI: Yes.



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1                   THE COURT: Do you understand that the Court in  
2                   relation to both charges may consider the imposition of a  
3                   term of probation of at least one year, not more than five  
4                   years for the violations; do you understand that?

5                   MR. SAJI: Yes, your Honor.

6                   THE COURT: And in addition, the Court may  
7                   consider ordering restitution to the victims of the  
8                   offenses charged in both Counts One and Two; do you  
9                   understand that?

10                  MR. SAJI: Yes.

11                  THE COURT: Again, your company's decision to  
12                  plead guilty to these charges is based upon the mutual  
13                  promises set forth in the Rule 11 Plea Agreement that has  
14                  been presented to the Court; is that accurate?

15                  MR. SAJI: Yes.

16                  THE COURT: And that agreement contemplates a  
17                  likely sentence of 65.3 million dollars to be imposed as a  
18                  criminal fine in relation to these guilty pleas; do you  
19                  understand that?

20                  MR. SAJI: Yes.

21                  THE COURT: In addition, the company promises to  
22                  fully cooperate with the Government in its investigation of  
23                  the wrongdoing in this case as well as any other wrongdoing  
24                  that it may be aware of; do you understand that promise?

25                  MR. SAJI: Yes.

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1 THE COURT: And in connection with the sentence to  
2 be imposed, again, if the Court accepts the Rule 11  
3 Agreement in this case, the Court could be expected to  
4 impose no term of probation, and no order of restitution in  
5 the case; do you understand that?

6 MR. SAJI: Yes, your Honor.

7 THE COURT: The judgment of the Court, however,  
8 would include a special assessment in the amount of four  
9 hundred dollars for each of the two violations; do you  
10 understand that?

11 MR. SAJI: Yes.

12 THE COURT: Do you understand that the Government  
13 for its part also makes several promises to the company as  
14 part of this agreement?

15 MR. SAJI: Yes, your Honor.

16 THE COURT: One of those promises is that the  
17 Government will understand no effort to prosecute others  
18 including directors, employees of the defendant for these  
19 violations except for those individuals who are identified  
20 in Attachment A to the Plea Agreement; do you understand  
21 that?

22 MR. SAJI: Yes.

23 THE COURT: In addition, the Government agrees to  
24 facilitate travel for employees and officers of the  
25 corporation back and forth between the United States and

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1 Japan; do you understand?

2 MR. SAJI: Yes.

3 THE COURT: And in addition you understand that  
4 there may be action undertaken in the nature of enforcement  
5 action by other agencies of the United States Government  
6 that are not necessarily agreeing to a hands off approach  
7 with the company in this case; do you understand that?

8 MR. SAJI: Yes, your Honor.

9 THE COURT: Okay. Mr. Gaul or Mr. Bell, are there  
10 any other promises as a part of this agreement that you  
11 want to make sure are covered in the colloquy this  
12 afternoon?

13 MR. GAUL: No, your Honor.

14 THE COURT: Okay. Mr. Bell?

15 MR. BELL: I believe one of the attachments to the  
16 Rule 11 Plea Agreement provides for amnesty or non-  
17 prosecution of certain former employees. I just wanted to  
18 call that to the Court's attention and make sure that's in  
19 the record.

20 THE COURT: Yes, those are listed separately from  
21 the ones I've identified; right?

22 MR. GAUL: Mr. Bell is referring to Attachment B.

23 THE COURT: B, okay. Yes, then the Court does have  
24 that as part of this package as well.

25 So, Mr. Saji, has anyone on behalf of the

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1 Government promised you, your company anything in this case  
2 that is not included as a part of the Rule 11 Agreement  
3 that has been signed?

4 MR. SAJI: No, your Honor.

5 THE COURT: And has anyone tried to force your  
6 company to plead guilty to these charges by any duress or  
7 mistreatment of any kind that has not been identified here?

8 MR. SAJI: No, your Honor.

9 THE COURT: So you believe that the company has  
10 agreed to plead guilty freely and voluntarily because in  
11 its judgment it is guilty of these violations?

12 MR. SAJI: Yes, your Honor.

13 THE COURT: Do you understand that the company has  
14 an absolute right to plead not guilty in the case and to  
15 have a trial instead if it wishes?

16 MR. SAJI: Yes.

17 THE COURT: And do you understand that by pleading  
18 guilty it's giving up its right to have a trial and a whole  
19 series of rights that we're going to discuss here.

20 MR. SAJI: Yes.

21 THE COURT: And it's giving up its right to a  
22 number of legal protections that are also going to be  
23 identified including the right to challenge the  
24 jurisdiction of this court to even hear the case.

25 MR. SAJI: Yes, your Honor.

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1                   THE COURT: Do you understand that if the case  
2                   were to go to trial the company has a right to be  
3                   represented by an attorney throughout the trial and could  
4                   cross-examine all of the witnesses called to testify  
5                   against it?

6                   MR. SAJI: Yes.

7                   THE COURT: I'm not sure this has ever happened,  
8                   but I suppose the company would also have the right to have  
9                   the Court appoint counsel to represent it if it could not  
10                  afford to hire one.

11                  MR. SAJI: Yes, your Honor.

12                  THE COURT: Okay. Do you understand that the  
13                  company would be presumed innocent of these charges until  
14                  proven guilty by the evidence beyond a reasonable doubt?

15                  MR. SAJI: Yes.

16                  THE COURT: And that the company during the course  
17                  of the trial could have the court order witnesses into  
18                  court to testify for it at the trial if it wishes?

19                  MR. SAJI: Yes.

20                  THE COURT: You understand that in connection with  
21                  the Government's burden of proof at a trial that it must  
22                  prove each element of each charge in this case before it  
23                  could be found guilty of a particular charge?

24                  MR. SAJI: Yes.

25                  THE COURT: So in relationship to the charge,

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1 conspiracy to restrain trade, the company would first have  
2 to prove the existence of a criminal conspiracy to in this  
3 case basically fix bids; do you understand that?

4 MR. SAJI: Yes.

5 THE COURT: And then once the Government has  
6 satisfied that burden to prove the conspiracy it would have  
7 to also prove that your company knowingly and voluntarily  
8 entered into that conspiracy; do you understand that?

9 MR. SAJI: Yes, your Honor.

10 THE COURT: And then, thirdly, the Government  
11 would have to prove that the conspiracy substantially  
12 affected interstate or foreign commerce in connection with  
13 it; do you understand that?

14 MR. SAJI: Yes.

15 THE COURT: As it relates to the obstruction of  
16 justice charge, do you understand that the Government would  
17 first have to prove that the company undertook various  
18 actions to destroy, conceal, or withhold evidence of the  
19 conspiracy to restrain trade that we just talked about; do  
20 you understand that?

21 MR. SAJI: Yes.

22 THE COURT: And, secondly, that it took action to  
23 these actions to destroy, concealed or withhold evidence  
24 with the intent to obstruct, influence or impede an  
25 official proceeding investigating these potential anti-

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1 trust law violations; do you understand that?

2 MR. SAJI: Yes, your Honor.

3 THE COURT: Okay.

4 MR. GAUL: Your Honor, if I may, the elements of  
5 18 USC Section 1512 also include attempts which is relevant  
6 to the facts of this case.

7 THE COURT: I see.

8 So that the proof need not be that the effort to  
9 destroy, conceal this evidence was necessarily successful  
10 as long as the jury concludes that it was undertaken with  
11 that intent, that certain actions were undertaken with the  
12 intent that it succeed; do you understand that?

13 MR. SAJI: Yes, your Honor.

14 THE COURT: Okay. Thank you, Mr. Gaul.

15 All right. So by pleading guilty there will be no  
16 trial so your company is necessarily waiving or giving up  
17 the right to require the Government to establish these  
18 elements beyond a reasonable doubt; do you understand that?

19 MR. SAJI: Yes.

20 THE COURT: Okay. So understanding the likely  
21 consequences of your plea of guilty and understanding the  
22 rights that you're giving up on behalf of the corporation  
23 to do so do you still wish to plead guilty to these  
24 charges?

25 MR. SAJI: Yes, your Honor.

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1 THE COURT: How then do you wish to plead to the  
2 charge of conspiracy to restrain trade, guilty or not  
3 guilty?

4 MR. SAJI: Guilty.

5 THE COURT: And how do you wish to plead for the  
6 corporation to the charges in Count Two of obstruction of  
7 justice, guilty or not guilty?

8 MR. SAJI: Guilty.

9 THE COURT: Okay. And I'm going to ask that you  
10 explain to the Court what the company did that leads it to  
11 conclude it is guilty of these violations? I have been  
12 presented with a statement that I understand you have  
13 worked out, your company has worked out with counsel and  
14 you intend to read that statement; is that right?

15 MR. SAJI: Yes, your Honor.

16 THE COURT: Go ahead, sir.

17 MR. SAJI: During the period from approximately  
18 July, 2000, through February, 2010, except for conduct  
19 relating to Nissan Motor Company, for which the period  
20 began in November, 2008, NGK Insulators, which is an entity  
21 organized and existing under the laws of Japan, agreed and  
22 conspired to rig bids on ceramic substrates that NGK  
23 directly or indirectly supplied to Toyota, GM, and Nissan  
24 in the United States and elsewhere.

25 Certain officers and employees of NGK had



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1 discussions with employees of a competitor that also  
2 manufactured ceramic substrates. During these meetings, NGK  
3 and its competitor reached agreements to fix prices on bids  
4 submitted to automobile manufacturers for ceramic  
5 substrates. As a result of these meetings, NGK produced and  
6 sold ceramic substrates that were subject to illegal price  
7 fixing agreements between NGK and its competitor. Certain  
8 of the ceramic substrates that were the subject of the  
9 conspiracy were sold in the Eastern District of Michigan.  
10 This conspiracy was an unreasonable restraint of interstate  
11 and foreign trade and commerce.

12 NGK's supply of ceramic substrates affecting  
13 Toyota, GM and Nissan in the United States and elsewhere  
14 totaled approximately \$250 million in sales during the  
15 relevant period.

16 THE COURT: All right. Thank you. And in relation  
17 to the charge of obstruction how do you think the company  
18 has violated that charge?

19 MR. SAJI: Yes, your Honor.

20 Between February, 2010, and July, 2012, after  
21 learning of governmental investigations of certain auto  
22 parts companies, including NGK's co--conspirator as well as  
23 NGK, certain high-level executives and other employees took  
24 actions to destroy, conceal, or withhold evidence of the  
25 anti-trust conspiracy.

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1                   These actions included deleting and/or attempting  
2                   to delete electronic files form the defendant's computer  
3                   systems; destroying and concealing paper files; removing  
4                   and replacing two high-level executives' office computers;  
5                   removing and concealing electronic files stores on the  
6                   office computer system of NGK's U.S. subsidiary in the  
7                   Eastern District of Michigan; attempting to destroy paper  
8                   files located at the office of this same subsidiary; and  
9                   engaging in misleading conduct and withholding information  
10                  about the conspiracy and certain of the obstructive acts as  
11                  I explained.

12                  THE COURT: All right, sir.

13                  Thank you.

14                  Are counsel satisfied that the plea tendered  
15                  today is sufficient?

16                  MR. GAUL: Yes, your Honor.

17                  MR. KENDALL: Yes, your Honor.

18                  THE COURT: All right. The Court is likewise  
19                  satisfied that the plea is voluntarily, knowledgeable and  
20                  accurate. The elements of the offense have been established  
21                  by the testimony received from the corporate representative  
22                  this afternoon.

23                  The Court has been requested by the parties to  
24                  consider imposing sentence immediately without preparation  
25                  of a Presentence Investigation Report.

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1 Are you still making that request, Mr. Gaul?

2 MR. GAUL: Yes, your Honor.

3 MR. KENDALL: Yes, your Honor.

4 THE COURT: All right. And you both believe that  
5 the Court has sufficient information to make a meaningful  
6 sentencing decision in this case?

7 MR. GAUL: Yes, your Honor, with materials in the  
8 Rule 11 Plea Agreement including the attachments thereto  
9 which your Honor as authorized to be filed under seal, as  
10 well as the explanations in the sentencing memorandum I  
11 believe the Court has adequate information in order to  
12 impose sentence today.

13 THE COURT: All right.

14 MR. BELL: We agree.

15 THE COURT: All right. Thank you.

16 The Court is also satisfied following its review  
17 of this information, the method for calculating the  
18 guideline range to be a five and the value of the  
19 cooperation afforded to the Government by defendant  
20 corporation that again it can meaningfully consider and  
21 weigh the factors provided for in the sentencing statute in  
22 order to arrive at a sentence. I have had the opportunity  
23 to do that. So the Court is prepared to accept the Rule 11  
24 Plea Agreement and will address the sentence in a moment.

25 Before doing that, however, I'd be happy to call

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1 on counsel for any statements you'd like to make concerning  
2 the punitive sentence to be imposed? Anybody --

3 MR. KENDALL: I believe MR. SAJI would like to  
4 make a brief statement, your Honor.

5 THE COURT: All right. On behalf of the  
6 corporation, MR. SAJI --

7 MR. SAJI: Yes.

8 THE COURT: I have received a printed copy of this  
9 man's statement, but I'd be happy to have you read it, sir.

10 MR. SAJI: Yes, your Honor.

11 On behalf of NGK, let me state how sincerely we  
12 regret the conduct that has led to this proceeding today.

13 The company has taken this matter very seriously.  
14 NGK has cooperated extensively with DO's investigation and  
15 will continue to do so. NGK has also sought to ensure that  
16 this type of conduct does not occur again by implementing  
17 an enhanced anti-trust compliance program with strict  
18 controls; including incorporating U.S. standards on the  
19 role of the board of directors, self-auditing such as email  
20 monitoring, robust employee training, and other measures;  
21 created a new position of Chief Competition Law Compliance  
22 Officer to administer the compliance program; and invited  
23 to Japan a former Deputy Assistant Attorney General in the  
24 DO's Anti-Trust Division to lecture NGK internal board  
25 members and executives on U.S. Anti-Trust law.

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1 I am the new Chief Competition Law Compliance  
2 Officer, and I believe these compliance measures will deter  
3 any future unlawful conduct.

4 Thank you, very much.

5 THE COURT: All right. Thank you, sir.

6 I'd be happy to call on the Government as well  
7 for any comments you'd like to make. I have had the  
8 opportunity to review the sentencing memorandums submitted.

9 MR. GAUL: Both of comments are set forth in the  
10 sentencing memorandum. Let me just highlight a few things.

11 We are moving for a downward departure with the  
12 recommended fine based upon the company's past cooperation,  
13 its promises for continued cooperation, its substantial  
14 assistance in pursuing other investigatory subjects that  
15 are the subject of sealed Attachment B to the plea  
16 agreement. And also for the structural changes that the  
17 company has undertaken as well as the institution of its  
18 compliance program.

19 And for all of those reasons we are seeking a  
20 downward departure.

21 THE COURT: All right, sir. Thank you.

22 The first factor for the Court to consider in  
23 determining an appropriate sentence in this case is the  
24 advisory guideline range. In this case, that range has been  
25 calculated based on the degree by which commerce has been

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1 affected by the violation.

2 In this case, the volume of commerce is the  
3 starting point for that calculation. And that has been  
4 agreed upon to amount to about 250 million dollars.

5 The base fine amount that is applied to that  
6 figure is a number that represents 20 percent of the volume  
7 or 50 million dollars.

8 There is a -- there are certain factors that  
9 again have been identified in the Rule 11 Plea Agreement  
10 and the sentencing memorandum indicating that the  
11 culpability score is based upon the calculated score of 11  
12 yielding a range of 100 million to 200 million dollars in  
13 criminal fines as the advisory range.

14 There is an upward adjustment of 8.9 percent that  
15 has been applied based upon the sales in the United States  
16 that are not accounted for in the initial volume of  
17 commerce, but are nevertheless reflective of the  
18 culpability of the defendant in the case. That would raise  
19 the floor for the sentence to be imposed to one hundred  
20 eight point nine million dollars.

21 And to that figure the company -- the Government  
22 has applied a reduction of 40 percent representing the  
23 level of assistance it believes has been forthcoming and  
24 will be forthcoming. So defendant as a part of its  
25 cooperation in the case and also as Mr. Gaul has pointed

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1 out reflective of the comprehensive compliance program and  
2 structural changes that were referenced in his remarks.

3 The Court is satisfied from the information  
4 presented that such a motion for a downward departure is  
5 appropriate both in terms of the granting of the motion and  
6 also in terms of the degree of the downward adjustment that  
7 is sought in the case and agreed upon between the parties.

8 The Court finds as it relates to a sentence  
9 adequately reflecting the seriousness of the offense, and  
10 the background, characteristics of the company as the  
11 offender that the proposed penalty in this case makes sense  
12 both as a reflection of the seriousness of the misdeeds  
13 committed but also in recognition of the deterrent affect  
14 that the imposition of a fine and the amount imposed will  
15 have on the defendant corporation and others who might be  
16 inclined to commit similar violations as well, both general  
17 and specific deterrence.

18 Those being the -- I guess the driving forces in  
19 the determination of the sentence to be imposed the Court  
20 finds that the proposed criminal fine is adequate and is  
21 sufficient but not greater than necessary to achieve those  
22 objectives.

23 Accordingly, and pursuant to the Sentencing  
24 Reform Act of 1984, the Court will impose a criminal fine  
25 in the amount of 65.3 million dollars to be paid within the

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1 next couple -- within 15 days of the entry of judgment  
2 should that occur this afternoon. And as it relates to the  
3 possibility of a probationary sentence, the Court is  
4 satisfied that there is no need to impose a probationary  
5 sentence in this case for several reasons.

6 First, the question of restitution is agreed upon  
7 as well between the parties, is going to be left to the  
8 civil process to determine which the Court finds to be  
9 superior and more effective than this -- and the  
10 alternative which would be this court setting up an entire  
11 process for determining and then executing restitution to  
12 the various victims of the violations in this case.

13 And because that cooperation contemplated by the  
14 Rule 11 Plea Agreement is still largely to be executed by  
15 the defendant under the supervision of the Government it  
16 would make no sense to duplicate that supervision here as  
17 part of the sentencing decision with either a probationary  
18 term or that order of restitution.

19 Accordingly, the Court will dispense with both.

20 The Court will, however, in relation to Count One  
21 impose a special assessment in the \$400, and in relation to  
22 Count Two a like amount of \$400 as a special assessment to  
23 be paid in the case.

24 That will be also -- that money will also be due  
25 within 15 days in full along with the criminal fine



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1 imposed.

2 Is there anything else you believe the sentence  
3 ought to address, Mr. Gaul?

4 MR. GAUL: No, your Honor, we believe that covered  
5 everything.

6 THE COURT: Mr. Bell?

7 MR. BELL: We agree.

8 THE COURT: Okay. Well, the Court having accepted  
9 the Rule 11 Agreement will not be advising the defendant of  
10 an opportunity to appeal the conviction and sentence  
11 imposed by the Court so I will not be doing that, but I  
12 will wish you good luck, sir.

13 MR. KENDALL: Thank you, your Honor.

14 And we thank you for your flexibility with  
15 scheduling it. It was a great imposition on the Court, and  
16 it was very helpful.

17 THE COURT: You are welcome.

18 MR. GAUL: Thank you.

19 (Proceedings concluded, 3:00 p.m.)

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1 CERTIFICATE

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3 I, JOAN L. MORGAN, Official Court Reporter for the  
4 United States District Court for the Eastern District of  
5 Michigan, appointed pursuant to the provisions of Title 28,  
6 United States Code, Section 753, do hereby certify that the  
7 foregoing proceedings were had in the within entitled and  
8 number cause of the date hereinbefore set forth, and I do  
9 hereby certify that the foregoing transcript has been  
10 prepared by me or under my direction.

11

12 S:/ JOAN L. MORGAN, CSR  
13 Official Court Reporter  
14 Detroit, Michigan 48226

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16 November 25<sup>th</sup>, 2015

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